

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

LAKE FOREST SCHOOL DISTRICT BOARD  
OF EDUCATION,

Petitioner.

and

LAKE FOREST EDUCATION ASSOCIATION,

Respondent.

D.S. No. 2000-01-274

The controlling statute in this matter is the Public School Employment Relations Act, 14 Del.C. Chapter 40 (1984) (hereinafter "Act" or "PSERA"). The Lake Forest School District (hereinafter "District" or "Petitioner") is a public school employer within the meaning of Section 4002(n) of the Act. The Lake Forest Education Association (hereinafter "Association" or "Respondent") is an employee organization within the meaning of Section 4002(h) of the Act and the exclusive representative of two bargaining units of the District's employees within the meaning of Section 4002(i) of the Act. The parties have negotiated one collective bargaining agreement which covers both the bargaining unit comprised of certified professional employees and the bargaining unit comprised of support staff.

APPLICABLE STATUTORY PROVISIONS

§4002 Definitions.

(s) "Fair share fee" means a fee that a nonmember shall be required to pay to the exclusive representative to offset his or her per capita share of the exclusive representative's expenditures. Such fee shall be equal in amount to regular

membership dues that a member of the exclusive representative is required to pay., including payments to the exclusive representative's affiliated organizations, or such lesser amount as is prescribed by the exclusive representative in compliance with the procedures contained herein.

(t) "Nonmember" means an employee of a public school employer who is not a member of the exclusive representative, but who is represented in a collective bargaining unit by the exclusive representative for purposes of collective bargaining.

§ 4003. School employee rights.

School employees shall have the right to: (1) Organize, form, join or assist any employee organization, provided that membership in, or an obligation resulting from collective bargaining negotiations to pay any dues, fees, assessments or other charges to an employee organization shall not be required as a condition of employment for certified professional school employees.

§ 4019. Fair share fees.

(a) If the provisions of a collective bargaining agreement so provide, each nonmember of a bargaining unit shall be required to pay the exclusive representative a fair share fee.

(b) To implement fair share agreements in accordance with subsection (a), the exclusive representative shall provide the public school employer with the name of each nonmember who is obligated to pay a fair share fee, the amount of the fee that he or she is obligated to pay and a reasonable and lawful schedule for deducting said amount from the salary or wages of such nonmember. The public school employer shall deduct the fee in accordance with said schedule and promptly transmit the amount deducted to the exclusive representative.

**APPLICABLE CONTRACT LANGUAGE**

Article 22: Deduction from Salary

A. As a condition of employment, employees will

become members of the Association or will pay a service fee determined by the Association. The District agrees to deduct such Association service fee from the pay of employees in the collective bargaining unit for more than thirty (30) days who are not, who do not become, or who do not remain members of the Association.

Article 25: Miscellaneous Provisions

D. If any provisions of this Agreement or any application of this Agreement [to] any employee is held to be contrary to any applicable law, or ruling of the Federal or State Governments, then such provisions or applications shall not be deemed valid or subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

BACKGROUND

Article 22, Section A appeared for the first time in the most recent collective bargaining agreement negotiated by the District and the Association. On January 13, 2000, the District filed a Request For Declaratory Statement requesting the PERB to rule upon the status and enforceability of Article 22, Section A.

The District contends that to require certified professional employees to pay a service fee as a condition of an employment violates section 4003(1), of the Act. It requests a determination as to whether Article 22, Section A should, therefore, be stricken from the collective bargaining agreement, in its entirety.

In its Answer filed on January 28, 2000, the Association argues that even if certified professional employees cannot be required to pay a service fee as a condition of employment, requiring those certified professional employees who choose not to join the Association to pay a service fee which is not a condition of employment is permitted under the Act. Consequently, the parties' intent that all non-members of the Association be required to pay a service fee should be enforced.

On February 8, 2000, the District filed a Response to the Association's Answer. Citing Alvini v. Colonial School District, Del. Ch., 641 A. 2d, 841 (1993) the District contends that the Act's legislative history confirms that Section 4003(1) "intends for all employees, 'other than certified professional employees,' to be subject to a negotiated obligation to pay service fees."

### DISCUSSION

The District is correct that Article 22, Section A, of the collective bargaining agreement, insofar as it requires certified professional employees who elect not to join the Association to pay a fair share fee as a condition of employment, conflicts with Section 4003(1), of the Act and is, therefore, illegal and unenforceable.

The District's reliance on the case of Alvini v. Colonial School District, *supra* for the proposition that Section 4003(1), of the Act excludes certified professional employees from any obligation to pay a service fee is misplaced. Unlike the current matter, the plaintiffs in Alvini were food service workers and paraprofessionals rather than certified professional employees. Furthermore, the issue raised in the Alvini case concerned the validity of a service fee, generally. The current matter raises the narrower issue of whether a service fee obligation can be imposed upon certified professional employees, as a condition of employment.

The term "condition of employment" is commonly understood in labor law to mean that the failure to meet the condition (in this case the payment of a fair share fee) constitutes a basis for summary discharge. Alvini v. Colonial School District, PERB Hearing Officer, ULP 92-03-073, II PERB 851 (1993) at 864, )citing Retail clerks v. Schermerhorn, 373 U.S. 746 (1963)); NLRB v. General Motors, 373 U.S. 743 (1963), Fort Wayne Ed. Ass'n, Inc. 443 N.E. 2d 364 Ind. App. (1983).

The language of Section 4003(1) of the Act is clear and unambiguous. It provides that school employees shall have the right to form, join or assist any employee organization. That right, however, is not unlimited. Section 4003(1) provides that for a limited class of employees, certified professional employees, the obligation to pay a fair share fee cannot constitute a condition of continued employment.

Section 4003(1) is consistent with and supported by the language of Section 4019, of the Act, Fair share fees, paragraph (a) which requires that "each nonmember of a bargaining unit" shall be required to pay a collectively bargained fair share fee. Neither provision excludes certified professional employees from the obligation to pay a collectively bargained fair share fee which is not a condition of employment. In the absence of a specific exception, the obligation to pay a collectively-bargained fair share fee includes the certified professional employees.

As set forth in Article 25, of the collective bargaining agreement, a provision or application of the contractual terms and conditions is valid except to the extent prohibited by law. The only portion of Article 22, Section A, which is contrary to law is the introductory phrase, "As a condition of employment", as it applies to certified professional employees. Otherwise, the provision is valid.

There is neither a statutory nor contractual basis requiring the removal of Article 22, Section A from the parties' collective bargaining agreement, in its entirety, simply because the fair share obligation, as a condition of employment, is inapplicable to a limited group of employees.

### DECISION

That portion of Article 22, Section A, of the collective bargaining agreement which obligates certified professional employees to pay a fair share fee as a

condition of employment violates Section 4003(1), of the Act and is, therefore, unenforceable.

The contractual obligation requiring certified professional employees who choose not to join the Association to pay a fair share fee which is not a condition of employment is permissible under the Act and constitutes a valid and enforceable provision of the collective bargaining agreement.

As to all other employees covered by the collective bargaining agreement, the application of Article 22, Section A, of the collective bargaining agreement, requiring the payment of the fair share fee as a condition of employment is clear on its face and unaffected by this decision.

March 13, 2000

(Date)

Charles D. Long

Charles D. Long,  
Executive Director